

10 CV 3568

Michael P. Bowen (mbowen@kasowitz.com)
Daniel J. Koevary (dkoevary@kasowitz.com)
Paul J. Burgo (pburgo@kasowitz.com)
KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP
1633 Broadway
New York, NY 10019
(212) 506-1700

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEMMA REDUX INC.,

Plaintiff,

- against -

BANANA REPUBLIC LLC, GAP INC., and DOES 1
THROUGH 10,

Defendants.
-----X



Civ. _____

**COMPLAINT AND
JURY DEMAND**

Plaintiff, Gemma Redux Inc. ("Gemma Redux"), for its complaint, alleges, based on actual knowledge as to itself and as to all other matters on information and belief, as follows:

PRELIMINARY STATEMENT

1. This is a copyright and trade dress action. The defendant, Banana Republic LLC ("Banana Republic") -- a massive apparel and accessories retailer with over 500 stores in North America -- unlawfully copied and infringed upon at least eighteen jewelry designs of plaintiff Gemma Redux, an up-and-coming American jewelry designer and maker of high-fashion "statement" necklaces, bracelets, and earrings.

2. Gemma Redux launched in 2006 and quickly received critical acclaim and widespread press and editorial coverage for its designs, recognized for their unique style. Its designs are sold world-wide through Gemma Redux's own website and major department stores and

retail boutiques. Most recently, Gemma Redux was recognized by the prestigious Council of Fashion Designers of America (“CFDA”) and the New York City Economic Development Corporation to be one of twelve participants in the “CFDA Fashion Incubator,” designed to support “the next generation of fashion designers in New York City” and “foster promising talent.”

3. In January 2010, Gemma Redux learned that defendant Banana Republic was offering for sale on its website and retail stores jewelry designs that were clear imitations of Gemma Redux’s designs at a fraction of Gemma Redux’s prices. Banana Republic offered for sale imitations of no less than eighteen Gemma Redux designs -- at times consisting of over a third of Banana Republic’s entire jewelry line -- many of which it still offers for sale today. These designs took Gemma Redux many years and hundreds of thousands of dollars to develop, market, and sell, and in just a matter of months the defendants have capitalized on this investment through their misappropriation of Gemma Redux’s designs.

4. The Gemma Redux designs described below were all published by Gemma Redux prior to the defendants’ manufacturing, offering for sale, and/or using in advertising campaigns infringing designs. All of the designs are original and creative works of Gemma Redux and such designs are validly protected by copyright. All of the designs have also been registered with the United States Copyright Office. The defendants have never sought nor received a license or other authorization from Gemma Redux to copy the Gemma Redux designs. The defendants have also refused Gemma Redux’s demand that they cease and desist from advertising, offering for sale, and selling jewelry that incorporates Gemma Redux’s designs.

5. Gemma Redux’s jewelry’s distinctive and unique combination of elements constitutes a trade dress that has secondary meaning and has been recognized as such in the

marketplace. The defendants have marketed, offered for sale, and sold products that embody Gemma Redux's trade dress.

6. As described herein, the defendants' blatant copying and misappropriation of Gemma Redux's designs violates 17 U.S.C. § 501, 15 U.S.C. § 1125(a), and also constitutes common law trade dress infringement and unfair competition. Gemma Redux seeks injunctive relief, disgorgement of profits, damages, and statutory attorneys' fees.

PARTIES

7. Plaintiff Gemma Redux is a corporation organized and existing under the laws of the State of New York, having an office and place of business at 141 Wooster Street, Suite 3B, New York, New York 10012.

8. Upon information and belief, Banana Republic is a limited liability corporation organized and existing under the laws of Delaware, having an office and place of business at Two Folsom Street, San Francisco, California 94105. Banana Republic is transacting and doing business in this judicial district and is subject to the personal jurisdiction of this Court.

9. Upon information and belief, Gap Inc. ("Gap") is a corporation organized and existing under the laws of Delaware, having an office and place of business at Two Folsom Street, San Francisco, California 94105. Gap is transacting and doing business in this judicial district and is subject to the personal jurisdiction of this Court.

10. Upon information and belief, defendants John Does 1-5 are individuals who are employees, officers, or other managing agents of one or more of the defendants named above and complained of herein, who have engaged in wrongful acts, directed the infringement for the benefit of one or more of the named defendants above and for their own individual gain and benefit, and/or had the right and ability to supervise the infringing conduct. Defendants John

Does 1-5 are transacting and doing business in this judicial district and are subject to the personal jurisdiction of this Court.

11. Upon information and belief, defendants John Does 6-10 are jewelers or suppliers of jewelry, other materials, and/or services, including, without limitation, necklaces and bracelets, who supplied such goods and/or services to the other defendants herein, knowing that they would be used to create infringing products, as set forth more fully below. Defendants John Does 6-10 are transacting and doing business in this judicial district and are subject to the personal jurisdiction of this Court.

12. Defendants Banana Republic, Gap, and John Does 1-10 are collectively referred to herein as “Defendants.”

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over the claims in this action arising under the Copyright Act pursuant to 28 U.S.C. §§ 1331 and 1338.

14. This Court has subject matter jurisdiction over the claims in this action arising under the Lanham Act pursuant to 28 U.S.C. §§ 1331 and 1338.

15. This Court has subject matter jurisdiction over the claims in this action arising under state law pursuant to 28 U.S.C. §§ 1367 and 1338.

16. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a).

FACTS

I. Gemma Redux’s Brand and Business

17. Gemma Redux designs and manufactures high-fashion jewelry including necklaces, bracelets, and earrings. Soon after its founding in 2006, Gemma Redux began receiving widespread publicity in major publications such as Marie Claire Magazine (September

2007), InStyle Magazine (August 2007), Cosmopolitan Magazine (October 2007), People Magazine (September 2007), and Zink Magazine (September 2007).

18. Beginning in late 2007, Gemma Redux received further exposure when its pieces were prominently featured in several episodes of the hit television show “Gossip Girl.” Gossip Girl was viewed by millions in the U.S. and around the world in part because of its focus on New York high fashion. As the show became a hit, Gemma Redux became known as a favorite brand of the show’s fashion director and stars. This resulted in additional substantial publicity for Gemma Redux both in print and online.

19. Gemma Redux has continued to grow in popularity and prestige as one of the design leaders in fashion jewelry. Beyond its initial publicity, Gemma Redux pieces have gone on to be featured in such domestic publications as Cosmopolitan, Harper’s Bazaar, InStyle, O Magazine, Women’s Wear Daily, Glamour, Marie Claire, Allure, City Magazine, People Magazine, People Style Watch, Zink, Page Six Magazine, InTouch, Life & Style, and US Weekly, and such international publications as Vogue Nippon, Flare, and InStyle Russia. Gemma Redux designs have also received publicity for being worn by celebrities including Cameron Diaz, Jessica Alba, Blake Lively, Molly Sims, Kristen Bell, Ginnifer Goodwin, Emily Deschanel, Emma Roberts, Jennifer Carpenter, Katy Perry, and Lake Bell. Gemma Redux designs continue to be prominently featured on Gossip Girl and have or will also be featured on the television shows “Ugly Betty” and “Royal Paris,” and the soon to be released motion picture “Wall Street 2: Money Never Sleeps.”

20. Recently Gemma Redux was also recognized as a major up-and-coming American designer by the prestigious CFDA and the New York City Economic Development Corporation, who chose Gemma Redux as one of twelve designers to participate in the “CFDA Fashion

Incubator” (“CFI”). According to the CFDA’s official press release, the CFI was “designed to support the next generation of fashion designers in New York City” by providing “a creative professional environment to foster promising talent in the field of fashion, help emerging fashion designers grow and sustain their businesses in New York City,” and foster selected designers ability to “reach their full potential and become an integral part of the New York fashion community.”

21. Today, Gemma Redux sells its collection world-wide, including in the United States, Canada, Japan, Hong Kong, Australia, and Russia, and in high-end department stores such as Bloomingdales, Harvey Nichols, and Fred Segal, as well as dozens of boutique stores. Gemma Redux pieces are also sold through major online vendors, including through Gemma Redux’s own website, www.gemmaredux.com, which to date has garnered over a thousand orders and tens of thousands of unique visitors.

II. Gemma Redux’s Jewelry Designs

22. As described in detail below, the Defendants are infringing upon the following Gemma Redux works. These designs are collectively referred to herein as the “Gemma Redux Jewelry Designs.”

A. The Carolyn Bracelet

23. Gemma Redux first published Style no. S9039 (the “Carolyn Bracelet”) on September 20, 2008. In March 2009, the Carolyn Bracelet appeared on DailyCandy Everywhere Edition, an email-based editorial subscription with over three million subscribers. The Carolyn Bracelet also appeared in InStyle Magazine in July 2009 and a necklace version of this design (differing only in length) was featured in the May 2009 edition of Harper’s Bazaar and the Spring 2009 edition of Women’s Wear Daily Accessories Report. Gemma Redux is the owner of

all rights, including the copyright, in the Carolyn Bracelet. The Carolyn Bracelet is pictured below:



24. The Carolyn Bracelet is an original and creative work of Gemma Redux, and such design is validly protected by copyright.

25. Gemma Redux owns Copyright Registration No. VA 1-701-873 for the SS09 (second release) collection, which includes the Carolyn Bracelet. A copy of this registration is annexed hereto as Exhibit A (the “873 Registration”).

B. The Alexa Bracelet

26. Gemma Redux first published Style no. S9033D (the “Alexa Bracelet”) on September 20, 2008. Gemma Redux is the owner of all rights, including the copyright, in the Alexa Bracelet. The Alexa Bracelet is pictured below:



27. The Alexa Bracelet is an original and creative work of Gemma Redux, and such design is validly protected by copyright.

28. Gemma Redux owns Copyright Registration No. VA 1-701-871 for the SS09 (first release) collection, which includes the Alexa Bracelet. A copy of this registration is annexed hereto as Exhibit B (the “871 Registration”).

C. The Green Serena Necklace

29. Gemma Redux first published Style no. Su3004 (the “Green Serena Necklace”) on October 1, 2008. The Green Serena Necklace has appeared in Page Six Magazine and has been worn publicly by and photographed on actress Blake Lively. Gemma Redux is the owner of all rights, including the copyright, in the Green Serena Necklace. The Green Serena Necklace is pictured below:



30. The Green Serena Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

31. Gemma Redux owns Copyright Registration No. VA 1-701-947 for the AW08 collection, which includes the Green Serena Necklace. A copy of this registration is annexed hereto as Exhibit C (the “947 Registration”).

D. The Scatter Necklace

32. Gemma Redux first published Style no. S10007 (the “Scatter Necklace”) on August 2, 2009. Gemma Redux is the owner of all rights, including the copyright, in the Scatter Necklace. The Scatter Necklace is pictured below:



33. The Scatter Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright.

34. Gemma Redux owns Copyright Registration No. VA 1-701-863 for the Spring 10 Preview collection, which includes the Scatter Necklace. A copy of this registration is annexed hereto as Exhibit D (the “863 Registration”).

E. The Erin Necklace

35. Gemma Redux first published Style no. F9021 (the “Erin Necklace”) on February 22, 2009. Gemma Redux is the owner of all rights, including the copyright, in the Erin Necklace. The Erin Necklace is pictured below:



36. The Erin Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

37. Gemma Redux owns Copyright Registration No. VA 1-701-867 for the Fall 09 collection (first release), which includes the Erin Necklace. A copy of this registration is annexed hereto as Exhibit E (the “867 Registration”).

F. The Libby Necklace

38. Gemma Redux first published Style no. Libby01 (the “Libby Necklace”) on October 23, 2007. Gemma Redux is the owner of all rights, including the copyright, in the Libby Necklace. The Libby Necklace is pictured below:



39. The Libby Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

40. Gemma Redux owns Copyright Registration No. VA 1-701-859 for the SS08 collection, which includes the Libby Necklace. A copy of this registration is annexed hereto as Exhibit F (the “859 Registration”).

G. The Libby Ribbon Bracelet

41. Gemma Redux first published Style no. H3026 (the “Libby Ribbon Bracelet”) on October 1, 2008. Gemma Redux is the owner of all rights, including the copyright, in the Libby Ribbon Bracelet. The Libby Ribbon Bracelet is pictured below:



42. The Libby Ribbon Bracelet is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

43. Gemma Redux owns the 947 Registration for the Libby Ribbon Bracelet.

H. The Liz Bracelet

44. Gemma Redux first published Style no. S9006 (the “Liz Bracelet”) on September 20, 2008. The Liz Bracelet has appeared in the July 2009 editions of InStyle Magazine and People StyleWatch and has been worn publicly by and photographed on actress Cameron Diaz. Gemma Redux is the owner of all rights, including the copyright, in the Liz Bracelet. The Liz Bracelet is pictured below:



45. The Liz Bracelet is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

46. Gemma Redux owns the 871 Registration for Liz Bracelet.

I. The Libby Green Onyx Bracelet

47. Gemma Redux first published Style no. Libby03 (the “Libby Green Onyx Bracelet”) on July 1, 2007. The Libby Green Onyx Bracelet has been worn publicly by and photographed on actress Blake Lively. Gemma Redux is the owner of all rights, including the copyright, in the Libby Green Onyx Bracelet. The Libby Green Onyx Bracelet is pictured below:



48. The Libby Green Onyx Bracelet is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

49. Gemma Redux owns Copyright Registration No. VA 1-701-861 for the AW07 collection, which includes the Libby Green Onyx Bracelet. A copy of this registration is annexed hereto as Exhibit G (the “861 Registration”).

J. The Anna Necklace

50. Gemma Redux first published Style no. S9010 (the “Anna Necklace”) on September 20, 2008. The Anna Necklace has appeared on the cover of Flare Magazine where it

was worn by musician Katy Perry. Gemma Redux is the owner of all rights, including the copyright, in the Anna Necklace. The Anna Necklace is pictured below:



51. The Anna Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

52. Gemma Redux owns the 871 Registration for the Anna Necklace.

K. The Lariat Necklace

53. Gemma Redux first published Style no. H4003 (the “Lariat Necklace”) on October 1, 2008. Gemma Redux is the owner of all rights, including the copyright, in the Lariat Necklace. The Lariat Necklace is pictured below:



54. The Lariat Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

55. Gemma Redux owns the 947 Registration for the Lariat Necklace.

L. The Karolina Necklace

56. Gemma Redux first published Style no. Karolina01 (the “Karolina Necklace”) on October 23, 2007. Gemma Redux is the owner of all rights, including the copyright, in the Karolina Necklace. The Karolina Necklace is pictured below:



57. The Karolina Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright.

58. Gemma Redux owns the 859 Registration for the Karolina Necklace.

M. The Cas Necklace

59. Gemma Redux first published Style no. S9009 (the “Cas Necklace”) on September 20, 2008. Gemma Redux is the owner of all rights, including the copyright, in the Cas Necklace. The Cas Necklace is pictured below:



60. The Cas Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright.

61. Gemma Redux owns the 871 Registration for the Cas Necklace.

N. The Sas Necklace

62. Gemma Redux first published Style no. F2005 (the “Sas Necklace”) on July 1, 2007. The Sas Necklace has appeared in Allure Magazine, People Magazine and Life and Style Magazine, and the Sas Necklace has also been worn publicly by and photographed on actress Blake Lively. Gemma Redux is the owner of all rights, including the copyright, in the Sas Necklace. The Sas Necklace is pictured below:



63. The Sas Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

64. Gemma Redux owns the 861 Registration for the Sas Necklace.

O. The Libby Canvas Bracelet

65. Gemma Redux first published Style no. Libby06 (the “Libby Canvas Bracelet”) on September 20, 2008. Gemma Redux is the owner of all rights, including the copyright, in the Libby Canvas Bracelet. The Libby Canvas Bracelet is pictured below:



66. The Libby Canvas Bracelet is an original and creative work of Gemma Redux, and such design is validly protected by copyright.

67. Gemma Redux owns the 871 Registration for the Libby Canvas Bracelet.

P. The Jamee Necklace

68. Gemma Redux first published Style no. SS949 (the “Jamee Necklace”) on September 20, 2009. Gemma Redux is the owner of all rights, including the copyright, in the Jamee Necklace. The Jamee Necklace is pictured below:



69. The Jamee Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

70. Gemma Redux owns Copyright Registration No. VA 1-701-874 for the SS10 (first release) collection, which includes the Jamee Necklace. A copy of this registration is annexed hereto as Exhibit H (the “874 Registration”).

Q. The Beth Necklace

71. Gemma Redux first published Style no. S9023 (the “Beth Necklace”) on September 20, 2008. The Beth Necklace has been worn publicly by and photographed on actress Jessica Alba and appeared on the cover of Flare Magazine where it was worn by musician Katy Perry as well as in an editorial spread in the January 2009 issue of Flare. Gemma Redux is the

owner of all rights, including the copyright, in the Beth Necklace. The Beth Necklace is pictured below:



72. The Beth Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

73. Gemma Redux owns the 871 Registration for the Beth Necklace.

R. The Liz Necklace

74. Gemma Redux first published Style no. S9005 (the “Liz Necklace”) on September 20, 2008. The Liz Necklace has been worn publicly by and photographed on actress Blake Lively, has been featured on Gossip Girl, and has appeared in O Magazine, InTouch Magazine, and Flare Magazine. Gemma Redux is the owner of all rights, including the copyright, in the Liz Necklace. The Liz Necklace is pictured below:



75. The Liz Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

76. Gemma Redux owns the 871 Registration for the Liz Necklace.

S. The Jamee Fall Necklace

77. Gemma Redux first published Style no. F9013 (the “Jamee Fall Necklace”) on January 3, 2009. The Jamee Fall Necklace has appeared in InStyle Russia. Gemma Redux is the owner of all rights, including the copyright, in the Carolyn Bracelet. The Jamee Fall Necklace is pictured below:



78. The Jamee Fall Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

79. Gemma Redux owns Copyright Registration No. VA 1-701-869 for the Fall 09 Preview collection, which includes the Jamee Fall Necklace. A copy of this registration is annexed hereto as Exhibit I (the “869 Registration”).

T. The Libby Mixed Chains Necklace

80. Gemma Redux first published Style no. Libby08 (the “Libby Mixed Chains Necklace”) on July 1, 2007. Gemma Redux is the owner of all rights, including the copyright, in the Libby Mixed Chains Necklace. The Libby Mixed Chains Necklace is pictured below:



81. The Libby Mixed Chains Necklace is an original and creative work of Gemma Redux, and such design is validly protected by copyright. Gemma Redux offers this design in multiple color and/or chain combinations.

82. Gemma Redux owns the 861 Registration for the Libby Mixed Chains Necklace.

III. Gemma Redux’s Trade Dress

83. Gemma Redux’s jewelry features a distinctive and unique combination of elements that collectively create a particular trade dress (the “Gemma Redux Trade Dress”). The

Gemma Redux Trade Dress consists of a collection of design elements. The combination of all or almost all such elements together gives the jewelry a distinct overall look and commercial impression. Although these elements cannot be perfectly described in words, the following describes the elements of the Gemma Redux Trade Dress: a mixture of chains of various styles, thicknesses and colors (including steel, stainless steel, 14K gold, 24K gold, green gold, rose gold, copper, brass and gunmetal) that are twisted, braided, knotted, hung, and woven together to create a non-ridged and “drippy” feel, often combined with natural or natural-looking stones and materials, highlighting the natural shape and/or texture of the stones or materials, *e.g.*, nugget-shaped and “rough cut” stones, asymmetrical cuts, stones, or materials with natural or created inclusions, and fabric materials that have a raw finish or rough texture.

84. The collection of features set forth in the above paragraph herein constitutes a distinctive trade dress that has secondary meaning. This design has been extensively promoted by Gemma Redux in the United States and internationally and has achieved significant sales success. The public has come to recognize this design as distinctive of this line of Gemma Redux jewelry and as an indication of source of such jewelry. The Gemma Redux Trade Dress is thus a means by which Gemma Redux is known to the public and the trade as the sole source and origin of Gemma Redux jewelry.

85. The Gemma Redux Trade Dress is not functional.

IV. Defendants’ Infringing Activities

86. On information and belief, Defendants have marketed, manufactured, sold, offered for sale, and/or distributed copies of the Gemma Redux Jewelry Designs and products embodying the Gemma Redux Trade Dress.

87. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 741962, which is an unauthorized copy and/or derivative work of Gemma Redux's Carolyn Bracelet. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Carolyn Bracelet	#741962

88. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 741962, which is an unauthorized copy and/or derivative work of Gemma Redux's Alexa Bracelet. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Alexa Bracelet	#741962

89. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 742328, which is an unauthorized copy and/or derivative work of Gemma Redux's Green Serena Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Green Serena Necklace	#742328



90. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 744947, which is an unauthorized copy and/or derivative work of Gemma Redux's Scatter Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Scatter Necklace	#744947

91. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 753249, which is an unauthorized copy and/or derivative work of Gemma Redux's Erin Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Erin Necklace	#753249

92. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, the item depicted below, which is an unauthorized copy and/or derivative work of Gemma Redux's Libby Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Libby Necklace	Item number unknown

93. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 734555, which is an unauthorized copy and/or derivative work of Gemma Redux's Libby Ribbon Bracelet. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Libby Ribbon Bracelet	#734555

94. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 751537, which is an unauthorized copy and/or derivative work of Gemma Redux's Liz Bracelet. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Liz Bracelet	#751537



95. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 746980, which is an unauthorized copy and/or derivative work of Gemma Redux's Libby Green Onyx Bracelet. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Libby Green Onyx	#746980



96. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 746980, which is an unauthorized copy and/or derivative work of Gemma Redux's Anna Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Anna Necklace	#746980


97. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 751575, which is an unauthorized copy and/or derivative work of Gemma Redux's Lariat Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Lariat Necklace	#751575



98. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 744945, which is an unauthorized copy and/or derivative work of Gemma Redux's Karolina Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Karolina Necklace	#744945



99. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 722102, which is an unauthorized copy and/or derivative work of Gemma Redux's Cas Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Cas Necklace	#722102

100. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, the item depicted below, which is an unauthorized copy and/or derivative work of Gemma Redux's Sas Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Sas Necklace	Item number unknown



101. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 751542, which is an unauthorized copy and/or derivative work of Gemma Redux's Libby Canvas Bracelet. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Libby Canvas Bracelet	#751542

102. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 744932, which is an unauthorized copy and/or derivative work of Gemma Redux's Jamee Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Jamee Necklace	#744932

103. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 753257, which is an unauthorized copy and/or derivative work of Gemma Redux's Beth Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Beth Necklace	#753257

104. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, the item pictured below that was offered for sale in a Banana Republic store, which is an unauthorized copy and/or derivative work of Gemma Redux's Liz Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Liz Necklace	Item number unknown

105. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 761147, which is an unauthorized copy and/or derivative work of Gemma Redux's Jamee Fall Necklace. A visual comparison of sample images of these pieces is below:

Gemma Redux	Banana Republic
	
Jamee Fall Necklace	#761147

106. Banana Republic is offering and/or has offered for sale, and/or used in advertising campaigns, item number 763747, which is an unauthorized copy and/or derivative work of Gemma Redux's Libby Mixed Chains Necklace. A visual comparison of these pieces is below:

Gemma Redux	Banana Republic
	
Libby Mixed Chains Necklace	#763747

107. No defendant in this action has sought or received a license or authorization from Gemma Redux for any purpose whatsoever, including for the acts described herein.

FIRST CLAIM

**COPYRIGHT INFRINGEMENT
IN VIOLATION OF 17 U.S.C. § 501**

108. Gemma Redux repeats and realleges paragraphs 1 through 107 above.

109. Defendants have infringed upon Gemma Redux's copyright in the Gemma Redux Jewelry Designs by reproducing such designs without authorization and distributing copies thereof by sale and other means, and/or contributing to or inducing the reproduction and distribution of said design.

110. Gemma Redux has no adequate remedy at law and is suffering irreparable harm, damage, and lost sales as a result of the acts of Defendants in an amount thus far not determined.

SECOND CLAIM

**TRADE DRESS INFRINGEMENT
IN VIOLATION OF 15 U.S.C. § 1125(a)**

111. Gemma Redux repeats and realleges paragraphs 1 through 110 above.

112. Defendants have reproduced, copied, and imitated the Gemma Redux Trade Dress in designing certain of their jewelry in a manner that is confusingly similar to the distinctive trade dress of Gemma Redux.

113. Defendants' adoption and use of the Gemma Redux Trade Dress constitutes trade dress infringement and deliberate and willful violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

114. The actions and conduct of Defendants complained of herein have damaged Gemma Redux and will, unless restrained, further impair, if not destroy, the value of the Gemma Redux Trade Dress and the goodwill associated therewith.

115. Defendants' trade dress infringement has caused Gemma Redux to sustain monetary damages, loss, and injury in an amount thus far not determined.

116. Defendants' trade dress infringement, unless enjoined by this Court, will continue to cause Gemma Redux to sustain irreparable damages, loss, and injury for which Gemma Redux has no adequate remedy at law.

THIRD CLAIM

**COMMON LAW TRADE DRESS
INFRINGEMENT AND UNFAIR COMPETITION**

117. Gemma Redux repeats and realleges paragraphs 1 through 116 above.

118. Defendants have reproduced, copied, and imitated the Gemma Redux Trade Dress in designing certain of their jewelry in a manner that is confusingly similar to the distinctive trade dress of Gemma Redux.

119. Defendants' actions constitute common law trade dress infringement and unfair competition.

120. The actions and conduct of Defendants complained of herein have damaged Gemma Redux and will, unless restrained, further impair, if not destroy, the value of the Gemma Redux Trade Dress and the goodwill associated with it.

121. Defendants' trade dress infringement has caused Gemma Redux to sustain monetary damages in the form of lost sales or lost business, loss, and injury, in an amount thus far not determined.

122. Defendants' trade dress infringement, unless enjoined by this Court, will continue to cause Gemma Redux to sustain irreparable damage, loss, and injury for which Gemma Redux has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Gemma Redux respectfully requests that this Court enter a Judgment:

- A. That Defendants, their officers, agents, servants, employees, and attorneys, and those in active concert or participation with them or any of them, be permanently enjoined and restrained from further copying or otherwise infringing Gemma Redux's copyrights identified herein.
- B. That Defendants be required to deliver to Gemma Redux for destruction any and all goods in their possession that infringe upon the copyrights identified herein.
- C. That Defendants be required, pursuant to 17 U.S.C. § 504, to account to Gemma Redux for any and all profits derived by them, and for all damages sustained by Gemma Redux by reason of said Defendants' actions complained of herein, including without limitation, Gemma Redux's lost profits, injury to future exploitation and damage to its copyright.
- D. That Defendants, their officers, agents, servants, employees, and attorneys, and those in active concert or participation with them or any of them, be permanently enjoined and restrained:
 - i. From using in any manner the Gemma Redux Trade Dress, alone or in combination with any other words or designs, in manner likely to cause confusion, deception, or mistake on or in connection with advertising, offering for sale or sale of any goods not manufactured by Gemma Redux, or not authorized by Gemma Redux to be sold in connection with Gemma Redux's marks;
 - ii. From representing, suggesting in any fashion to any third party, or performing any act that may give rise to the belief that Defendants, or any of their goods, are authorized or sponsored by Gemma Redux;

- iii. From passing off, inducing or enabling others to sell or pass off any goods as products produced by Gemma Redux that are not in face genuine Gemma Redux goods, or not produced under the control and supervision of Gemma Redux and approved by Gemma Redux; and
- iv. From otherwise competing unfairly with Gemma Redux in any manner.

E. That Defendants be required to deliver to Gemma Redux for destruction any and all goods in their possession or under their control that were or are being advertised, promoted, offered for sale or sold in connection with the Gemma Redux Trade Dress, whether alone or in combination with any words or designs.

F. That Defendants be required to deliver to Gemma Redux for destruction any and all catalogs, circulars, and other printed material in their possession or under their control displaying or promoting the goods that were or are being advertised, promoted, offered for sale or sold in connection with the Gemma Redux Trade Dress, whether alone or in combination with any words or designs.

G. That Defendants be ordered pursuant to 15 U.S.C. § 1116(a) to file, with the Court and serve upon Gemma Redux, within thirty (30) days of entry of injunction prayed for herein, a written report under oath and affirmed under penalty of perjury setting forth in detail the form and manner in which it has complied with permanent injunction.

H. That Defendants be required, pursuant to 15 U.S.C. § 1117, to account to Gemma Redux for any and all profits derived by it, and for all damages sustained by Gemma Redux by reason of Defendants' actions complained of herein, including an award of treble damages provided for by statute.

I. That Gemma Redux be awarded both pre-judgment and post-judgment interest on each and every damage award.

J. That pursuant to 15 U.S.C. § 1117, Gemma Redux have and recover from Defendants Gemma Redux's reasonable attorneys' fees, costs, and disbursements of this action.

K. That Gemma Redux have such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMAND

Plaintiff respectfully demands a trial by jury on all claims and issues so triable.

Dated: April 29, 2010

Respectfully submitted,

KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP

By: 

Michael P. Bowen (mbowen@kasowitz.com)

Daniel J. Koevary (dkoevary@kasowitz.com)

Paul J. Burgo (pburgo@kasowitz.com)

1633 Broadway
New York, New York 10019
(212) 506-1700

Attorneys for Plaintiff